

REMARKS / ARGUMENTS

Claims 7-16 remain pending in this application. Claims 7-16 all have been amended. No claims have been canceled or added.

Examiner Interview

The courtesy of the Examiner at an interview with Applicants' attorneys Shrinath Malur and Gene W. Stockman on September 29, 2009 is greatly appreciated. The substance of the interview is believed accurately set forth in the Interview Summary issued by the Examiner at the conclusion of the interview and in the remarks which follow.

Applicants discussed in detail the manner in which they believe the claims of the present application find support in Japanese priority applications JP2000-50034 and JP2000-54955. The Examiner agreed to further research this issue.

Applicants further agreed to amend claim 7 to clarify the relationship of the physical properties and analysis items and to positively claim the liquid, as well as to amend the claim so that the means plus function language is consistent. Applicants further agreed to amend the other claims consistent with the amendments to claim 7.

Priority

Applicants appreciate the Examiner's acknowledgment of the claim for priority and safe receipt of the priority document.

35 U.S.C. §112

Claims 7-16 stand rejected under 35 USC 112 as being indefinite for the various reasons set forth on pages 3-5. Applicants have amended the claims in a manner in which it is believed satisfies all the Examiner's objections and the claims now satisfy all the requirements of 35 USC §112 as discussed hereafter.

Independent claims 7, 11 and 16 have been amended to recite an analyzing unit for analyzing the physical properties of the specimen and to clarify that the automatic analyzer is for analyzing analysis items corresponding to physical properties of a specimen and that the reaction vessel is for containing a liquid including the specimen and a reagent corresponding to an analysis item of the specimen.

The first and second acoustic wave generation means have now been redefined as a first means for generating an acoustic wave located laterally outside of the reaction vessel and a second means for generating a lower acoustic wave which is irradiated from a bottom of the reaction vessel towards a level of the liquid so as to raise a part of the liquid level by an acoustic radiation pressure of the lower acoustic wave.

The last line of claim 7 has been amended to describe the position as the position of the acoustic wave irradiated from said first means for generating an acoustic wave.

The Examiner further stated it was unclear what constitutes an associated format as used in claims 8, 9, 12 and 13. Using claim 8 as an example, the

associated format refers to the acoustic wave irradiation position of the acoustic wave irradiated from the first means for generating an acoustic wave being in a format such as that shown in Fig. 13(a) wherein for each analysis item such as analysis items A and B the irradiation positions A and B, respectively, are set forth. Moreover, Fig. 13(b) refers to analysis items having a specified sample quantity and a specified reagent quantity. Fig. 13(c) refers to an analysis item having a certain radiation intensity corresponding to analysis items A and B. Fig. 13(b) refers to reagent data A and irradiation intensity A in the specified format.

Other amendments have been made to the claims to satisfy various of the Examiner's objections relating antecedent basis.

It is believed that the amendments to the claims now satisfy all the Examiner's objections and meet all the requirements of 35 USC §112.

Double Patenting Rejection

Claim 16 was objected to as being a substantial duplicate of claim 7 and 11. Claim 16 has now been amended to refer only to the intensity of the acoustic wave irradiated from the first means for generating an acoustic wave. It is submitted that this now satisfies the Examiner's double patenting rejection.

35 U.S.C. §§102 and 103

Claims 7, 10-11 and 15-16 stand rejected under 35 U.S.C. §102(e) as being anticipated by Akira (JP 2000-338113). Claims 8-9 and 12-14 stand rejected under

35 U.S.C. §102(e) as being anticipated by or, in the alternative, under 35 §103(a) as obvious over Akira. These rejections are traversed as follows.

Patentability of the Claims

As discussed with the Examiner at the interviews, Applicants do not believe that the Akira JP2000-338113 reference is prior art against the present application. Applicants are claiming priority of JP2000-50034 filed February 25, 2000 and JP2000-54955 filed February 29, 2000. The Akira reference was not published until December 8, 2000. Accordingly, the filing dates of both the Japanese references for which Applicants claim priority are well before the publishing date of the Akira reference.

Nevertheless, even if Applicants could not rely on the filing dates of the priority documents, it is submitted that the claims are still patentable over Akira. Claim 7, for example, recites a control means for controlling a position for irradiation of the acoustic wave by the first means for generating an acoustic wave according to the liquid level. Claim 7 also states that the part of the liquid level raised by the acoustic wave from the second means for generating a lower acoustic wave is irradiated with the acoustic wave from the first means for generating an acoustic wave by controlling the position of the acoustic wave irradiated from the first means for generating an acoustic wave. This is done to agitate the liquid in the reaction vessel.

On the other hand, Akira uses a pair of side array sound sources 205 and a pair of sound receiving elements 207 in order to determine the position of a liquid surface 209. A lower sound source 206 is used to raise the liquid level of a portion

of the liquid in order to make it possible to determine properties of the liquid such as surface tension, concentration, hydrophilic property, etc. (see Abstract). This determination is performed in order to more optimally perform agitation thereafter (see para. [0006] of the translation of Akira). As such, the sound sources 205 and 206 are used to detect properties of a liquid before and after agitation. Thus, these sound sources do not correspond to the first means for generating an acoustic wave and second means for generating a lower acoustic wave. Furthermore, Akira does not disclose any control means for controlling a position for irradiation of the acoustic wave by the first means for generating an acoustic wave according to the liquid level. The remaining independent claims are patentable for reasons similar to that set forth above with respect to claim 7.

With respect to agitating the liquid, Akira refers to a spatula and screw method as well as a supersonic wave method (see para. [0002] and para. [0003] of the translation of Akira). With respect to the supersonic wave, Akira refers to JP 08-146007, and does not provide additional details (see [0003] of the translation of Akira).

Conclusion

In view of the foregoing amendments and remarks, the Applicants request reconsideration of the rejection and allowance of the claims.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of Mattingly & Malur, P.C., Deposit Account No. 50-1417 (referencing attorney docket no. NIP-217-02).

Conclusion

In view of the foregoing, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Please charge any shortage of fees due in connection with the filing of this paper, or credit any overpayment of fees, to Deposit Account 50-1471.

Respectfully submitted,

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